

FUTURE PERMITTING, REGULATION, AND CONTROL OF NOISE FROM INDUSTRY AFTER THE UNITED KINGDOM LEAVES THE EUROPEAN UNION

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Environmental Noise (England) Regulations 2006 (as amended) brought into UK law the requirements of the Environmental Noise Directive. This requires the mapping of noise from Industry, aircraft, railway and road transport. It also requires the development and publishing of noise action plans. The IPPC directive and Industrial Emissions Directives have requirements relating to industrial noise which are implemented in England under the Environmental Permitting Regulations. This paper will discuss the interaction between the various EU Directives and UK legislation and possibilities for future noise regulation for industry. This work is likely to be of interest to consultants, planners and policy makers involved in Integrated Pollution Prevention and Control (IPPC, Directive 96/61/EC and the superseding Directives 2008/1/EC and 2010/75/EU), and the control of environmental impacts of industrial activities.

1. Introduction

The United Kingdom (UK) has started proceedings to leave the European Union. For approximately 50 years the UK legislation and government policies have been driven by EU directives and regulations. The implications for the UK are enormous with noise only being a small area which will be directly affected. Some UK legislation relating to noise is in addition to EU requirements. This is mainly legislation which in some form or another predates joining the EU, such as planning legislation and the statutory nuisance framework. However membership of the EU has meant changes to the way noise is assessed and controlled. The two major directives which affect the way we deal with noise is the Environmental Noise Directive, which was implemented through the Environmental Noise Regulations and the Integrated Pollution Prevention and Control Directive.

This paper focuses on Industrial noise and so is only concerned with the noise relating to Industry and so mainly covers the Integrated Pollution Prevention and Control (IPPC, Directive 96/61/EC and the superseding Directives 2008/1/EC and 2010/75/EU) and the Industrial Emissions Directive.

2. The Environmental Noise Directive

The Environmental Noise Directive requires all Member States to Map and report noise from Road, Rail and Airports. It also requires member states to Map and report noise from Industrial Sources. The mapping and reporting is required by the directive to be carried out every 5 years. This noise mapping is currently being carried out for 2016 data and will be reported to Europe in 2017.

The Environmental Noise Directives leaves the types of industry to be mapped and reported to the discretion of the member state. The UK currently maps noise from IPPC Directive Schedule 1 processes only.

The Member states are currently implementing the requirements of CNOSSOS which is the EU Common Noise Mapping Method. In reality it is not a common method but whilst making some things common, every Member States national method is detailed so is actually a collection of methods.

The Environmental Noise Directive also requires the Member States to use the Noise Mapping to develop Noise Action Plans.

3. The Environmental Noise Regulations

The Environmental Noise Regulations 2006 were brought in to ensure that the requirements of the Environmental Noise Directive were carried out and that the requirements were assigned to various bodies. This regulation is on the statute solely to ensure that the UK complies with Environmental Noise Directive.

4. The Environmental Permitting Regulations

In 2007, the Environmental Permitting Regulations combined The Pollution Prevention and Control (England and Wales) (PPC) Regulations 2000 [8] and Waste Management Licensing (WML) Regulations 1994 [9]. The Environmental Permitting Regulations (England and Wales) 2010 [11] were introduced on 6 April 2010, replacing the 2007 Regulations [10]. This is the current method in England and Wales of implementing IPPC, Directive 96/61/EC [5] and the amending Directive 2008/1/EC [6]. The requirements of 2010/75/EU [7] the Industrial Emissions Directive (IED) which are also implemented in England and Wales through the same regulatory regime; however this means little or no practical change for noise due to noise being dealt with in an almost identical manner.

Major Industry is regulated through the Environmental Permitting Regulations through permits. The operator is required to apply for a permit and to comply with any issued Permit.

Under current UK legislation in England and Wales under the Environmental Permitting Regulations[10][11] operators are required to use Appropriate Measure (AM) to control pollutants including noise. Appropriate Measures is a term which came from the Waste Management Licensing Regulations (WML), In Scotland and Northern Ireland operators are required to use Best Available Techniques (BAT). However, Best Available Techniques and Appropriate Measures for all practical purposes for noise can, be considered to be equivalent in all respects. A good standard of noise control is achieved through these regimes.

For IPPC and Industrial Emissions Directive processes BAT reference documents (BREF) for the various sectors, such as Cement and Lime, Combustion, Chemicals etc. can be a useful source of information for assisting with demonstration of BAT for all emissions, including noise.

5. Noise Policy Statement for England (NPSE)

No reference to noise relating to English legislative requirements is complete without referring to the Noise Policy Statement for England. It is mentioned here in respect of what happens when the United Kingdom leaves the European Union. Since this is the national policy for Noise it is likely that this will be the main influence on future amendments to legislation affecting noise.

5.1 Overview of the NPSE

The NPSE [1] has a succinct 'Noise Policy Vision: Promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development'. It consists of six brief paragraphs of text, a statement of three aims, five guiding principles for sustainable development, and four pages of explanatory notes. The NPSE [1] separates policy from technical advice, which in principle allows more rapid changes to how noise is managed as knowledge about impacts develops, without the need to go back and review policy.

5.2 Scope of the NPSE

Any organization that has a responsibility for managing noise is responsible for implementing the NPSE [1]. It applies to all noise not simply ambient noise, with only workplaces excluded. The long term vision is supported by the following aims:

- i) avoid significant adverse impacts on health and quality of life from noise,
- ii) mitigate and minimize adverse impacts on health and quality of life from noise,
- iii) where possible contribute to the improvement of health and quality of life.

5.3 General applicability of the NPSE

There is a requirement for all regulating bodies at the time of rewriting any noise guidance to take into account the NPSE [1]. There is also a requirement that any regulating body making any decisions that may have noise implications takes the NPSE [1] into account. This would apply to County and Local Council Planning Authorities as well as national regulating bodies such as the Environment Agency. Therefore any council planning department should be able to demonstrate their consideration of this where noise is a consideration and that the decision is consistent with the guiding principles of NPSE [1]. Evidence is recently starting to emerge that the NPSE [1] is being implemented, especially for applications which there is a high likelihood of appeal or noise is a major consideration. However evidence is patchy of this is being done in any substantial way by local authorities with few showing detailed working knowledge or understanding of the document.

5.4 NPSE and the IPPC and Industrial Emissions Directives

The NPSE [1] goes on to provide useful advice on interpretation of its aims, including the need to integrate consideration of the economic and social benefit of the activity or policy under examination with proper consideration of the adverse environmental effects. This is consistent with Directive 2008/1/EC [6], which is the latest edition of the IPPC Directive. The NPSE [1] itself does not help clarify the conflict that is often faced between, for example, accepting that a particular development will have some negative impact on the noise climate of some individuals, although that impact is acceptable for the wider benefit to society.

6. What are the immediate implications for Industrial Noise when the United Kingdom leaves the European Union?

The government is currently bringing all EU legislation into UK Law to ensure continued stability, so this should ensure things carry on as now.

Even when looking at the major noise related European Directives as discussed previously they have been brought into UK law by a corresponding regulation. Initially nothing should change as the Environmental Noise (England) Regulations 2006 (as amended) are in place so unless this is repealed noise mapping will still be required.

The Environmental Permitting Regulations as amended are in place. Therefore Industrial Noise which is currently regulated through a regime which has some routes in the EU are in place with specific UK regulations.

The Statutory Nuisance regime dates back to the 19th Century in the UK and so is unaffected by leaving the European Union.

It is unlikely that future environmental court cases will have a route of appeal the European courts, and there have been numerous cases where the European courts have come to a different decision than our Supreme Court.

7. What are the longer term implications for Industrial Noise the day after the United Kingdom leaves the European Union?

In the longer term there is a real possibility that UK will be able to amend or to repeal any of the directives and make them more suitable for the needs of the nation.

7.1 The Environmental Noise Directive

There is no history in the UK of anything similar or attempting to do the same thing before the existence of the Environmental Noise Directive. England and Wales have the corresponding regulation. The Industrial Noise currently mapped by the UK is controlled under the Environmental Permitting Regulation through permits. The EU method of mapping Industrial Noise is not appropriate for Industrial noise control. BS4142:2014 is a far superior method of assessing the noise impact of industry, however this does not lend itself to noise mapping, as any location may have multiple noise ratings from different adjacent industries. Hence there is absolutely no benefit in noise mapping the Industrial noise.

Hence there are two options for dealing with this, which is remove industrial noise mapping from the Environmental Noise regulation and transferred directive or alternatively repeal both the regulation and the directive and stop doing noise mapping, however the second option is beyond the scope of this paper.

7.2 The IPPC Directive, and Industrial Emissions Directive

The UK had legislation covering the same control of industry for all emissions to air land and water under the Prescribed Substances (England and Wales) Regulations [13]. The only thing it did not control was noise from the regulated site. The IPPC Directive [5] was a very close copy of the previous UK legislation.

For IPPC and Industrial Emissions Directive processes BAT reference documents (BREF) for the various sectors, such as Cement and Lime, Combustion, Chemicals etc. can be a useful source of information for assisting with demonstration of BAT for all emissions, including noise. Hence there appears to be very little likelihood of these two directives requirements being repealed.

Before the IPPC Directive noise was controlled by planning and by Statutory Nuisance. However Industrial Noise is better controlled under a permit than reverting back to the old statutory nuisance regime as a permit is far more compatible with the Noise Policy Statement for England and allows the balancing of other emissions with noise to decide on the best environmental option for the environment as a whole.

8. Conclusions

The Noise Policy Statement for England [1] is the main document that should be used to steer legislation relating to noise control in England.

The UK should remove industrial noise mapping from UK legislation including any requirements for industrial noise mapping transposed under the transposing of all current EU directives into UK law to ensure maintaining stability as the United Kingdom leaves the European Union.

The UK should be more able to amend legislation relating to control of emissions from industry including noise. It is unlikely that the Environmental Permitting Regulations will need significant

amendment in the near future. However there could be more flexibility to For IPPC directive processes to use alternatives to BAT as defined by European BREF documents; however this may form part of subsequent Trade Deals or access to the European Single Market.

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